IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O. No. 994 of 1987

Date of Decision: 20.9.2006

Smt. Om Pati and others

...Appellants.

Versus

Chhotu Ram and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. Rajiv Sharma, Advocate for the appellants.

Mr. Girish Agnihotri, Advocate for respondent No.2.

Mr. Neeraj Khanna, Advocate for respondent No.3.

AJAY KUMAR MITTAL, J.

This order shall dispose of two appeals bearing FAO No. 994 of 1987 titled as Smt. Om Pati and others Vs. Chhotu Ram and others and FAO No. 1050 of 1987 titled as Kali Ram Vs. Chhotu Ram and others. For brevity, the facts are being taken from FAO No. 994 of 1987.

This appeal by the claimants has been filed against the award dated 2.5.1987 passed by the Motor Accident Claims Tribunal, Hisar (for short “the Tribunal”) for enhancement of the compensation that has been awarded by the Tribunal.

The facts of the case are that on 26.5.1986 the deceased along with his brother Kali Ram was going from village Hansi to village Kharar on his scooter and when they were 6 kms away from Mayyer towards Hansi, a

bus which was being driven negligently in a zig-zag manner struck against the scooter. As a result thereof, Basau died at the spot and Kali Ram was seriously injured. It was pleaded that Kali Ram remained in Hospital upto 24.6.1986. It was further pleaded that a criminal case under Sections 279/337/304-A of Indian Penal Code was also registered against the driver of the bus.

The claim petitions filed by the petitioners were resisted by the respondents by filing separate written statements. It was pleaded that no accident took place. It was further pleaded that the front wheel of the scooter slipped and the deceased and Kali Ram fell down on the road and received injuries. Respondent No.3 pleaded that the accident took place due to rash and negligent driving of the scooter by Basau Ram and the scooter slipped because of its rash driving. It was further pleaded that the injured never informed about the alleged accident and the vehicle was not being driven by any person holding a valid driving licence. The other allegations made in the claim petition were denied.

On the pleadings of the parties, the Tribunal framed the following issues:-

"1. Whether the accident took place due to the rash and negligent driving of the bus by Chhotu Ram respondent No.1? OPP
2. To what amount of compensation, the claimants are entitled and and from whom? OPP
3. Whether the claimants have no cause of action? OPR
4. Whether the claim petitions are not maintainable on the grounds alleged in the additional pleas? OPR
5. Whether the claim petitions are time barred? OPR
6. Relief."

The Tribunal after appreciating the evidence led by the parties, under issue No.1 held that the accident took place due to rash and negligent driving of the offending bus by Chhotu Ram-respondent No.2. Under issue No.2, the Tribunal held that the deceased was earning about Rs.1000/- per month out of which he used to contribute Rs.500/- towards his family and held the claimants entitled to the amount of Rs.96,000/- as compensation. Further, the Tribunal held Kali Ram entitled to a sum of Rs.5000/- as compensation on account of the injuries sustained by him and for the expenses incurred on his treatment.

Learned counsel for the appellants submitted that the quantum of compensation awarded by the Tribunal is inadequate and under Section 168 of the Motor Vehicles Act, 1988, the Tribunal ought to have awarded just compensation to the claimants. Learned counsel for the respondents, on the other hand, submitted that no interference in the compensation awarded by the Tribunal is called for.

I have heard learned counsel for the parties and perused the record with their assistance.

The claimant Ompati herself appeared as PW1 and examined PW4 Ram Kumar Saini, a partner in firm M/s Friends Beej Bhandar, Main Road, Barwala and Sadhu Ram PW7 who is the brother of deceased Basau Ram regarding the total income of the deceased.

The claimants except the oral testimonies of the above witnesses, did not produce any material to support the same. The Tribunal after examining and appreciating the evidence produced on record by the claimants came to the conclusion that the monthly income of deceased Basau was Rs.1000/-. On consideration of the entire evidence on record, no variation in the conclusion arrived at by the Tribunal in assessing the income of the deceased at Rs.1000/- per month is called for. However, the

Tribunal has applied cut of 50% for personal expenses of the deceased and has taken the dependency of the claimants at Rs.500/- per month and after applying the multiplier of 16, quantified the compensation at Rs.96,000/-. The dependency of the claimants taken at Rs.500/- per month by the Tribunal is on the lower side. The deceased Basau had widow and five minor children who are the claimants in the present case. In such a situation and in the facts and circumstances of the present case, the just and appropriate dependency would be 70% i.e. after reducing 30% for the personal expenses of the deceased. The dependency would, thus, come to Rs.700/- per month and after applying the multiplier of 16 as adopted by the Tribunal, the just and appropriate compensation in the present case would come to 700 x 12 x 16 = 1,34,400/-. The claimants are accordingly held entitled to Rs.1,34,400/- as compensation. The claimants shall also be entitled to interest at the rate of 9% per annum on the enhanced compensation from the date of award till its realization.

Now, adverting to the appeal filed by Kali Ram who was the injured in the motor vehicular accident has been awarded Rs.5000/- as compensation on account of injuries sustained by him and for the expenses incurred on his treatment. Dr. Pawan Goyal who treated Kali Ram had deposed that Kali Ram had developed paresis on the left side of body and had discrimination to time and space with impaired memory. The discharge slip Ex.P3 was also proved. Dr. S.K. Gupta PW8 who medico-legally examined Kali Ram found 11 injuries on his person vide MLR ExP4. PW7 Sadhu Ram, another witness produced by Kali Ram deposed that he remained in Medical College and Hospital, Rohtak for 1-1/2/2 months.

Keeping in view the totality of facts and circumstances, it would be just and appropriate to award Rs.10,000/- for the pain and suffering and for the medical expenses to Kali Ram. Accordingly, claimant Kali Ram shall

be entitled to interest at the rate of 9% per annum on the enhanced amount from the date of award till its realization.

With this modification, both the appeals are allowed to the extent as indicated above.

September 20th, 2006
gbs

(AJAY KUMAR MITTAL)
JUDGE

F.A.O. No. 1050 of 1987

Kali Ram Vs. Chhotu Ram and others

****

Present: Mr. Rajiv Sharma, Advocate for the appellant.

Mr. Girish Agnihotri, Advocate for respondent No.2.

Mr. Neeraj Khanna, Advocate for respondent No.3.

****

For orders, see FAO No. 994 of 1987 titled as Smt. Om Pati and others Vs. Chhotu Ram and others

September 20th, 2006 **(AJAY KUMAR MITTAL)**
gbs **JUDGE**